

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GARY L. BURNETT)	
Claimant)	
VS.)	
)	
HAREN & LAUGHLIN CONSTRUCTION COMPANY, INC.)	Docket No. 223,949
Respondent)	
AND)	
)	
BUILDERS' ASSOCIATION SELF- INSURERS' FUND)	
Insurance Carrier)	

ORDER

Claimant appealed the March 2, 1999 Award entered by Administrative Law Judge Julie A. N. Sample. The Appeals Board heard oral argument in Kansas City, Kansas, on August 17, 1999.

APPEARANCES

Nathan C. Harbur of Overland Park, Kansas, appeared for the claimant. Wade A. Dorothy of Lenexa, Kansas, appeared for the respondent and its insurance fund.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a March 26, 1997 accident. After finding that claimant failed to prove that he injured himself at work, the Judge denied the request for benefits.

Claimant contends Judge Sample erred. Claimant argues that the Judge's findings are wholly inconsistent with the evidence presented. Also, he contends that he is entitled

to receive an award for a 15 percent functional impairment to the left leg, payment of outstanding medical expense, and additional temporary total disability benefits.

Conversely, the respondent and its insurance fund contend the Award should be affirmed in all respects.

The only issues before the Board on this appeal are:

1. Did claimant injure his left knee while working for the respondent on or about March 26, 1997?
2. If so, what is the nature and extent of injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds:

1. The Award denying benefits should be affirmed.
2. The Appeals Board adopts the findings and conclusions set forth by Judge Sample in the Award. Further, there is nothing in the record to suggest that Mr. Burnett's former friend, Rodney Warren, had any motive to lie about either the accident not occurring or that Mr. Burnett had offered him money to testify. Therefore, the Appeals Board likewise finds and concludes that Mr. Burnett failed to prove that he sustained personal injury by accident arising out of and in the course of employment with Haren & Laughlin Construction Company, Inc.
3. Workers have the burden of proof to establish their right to compensation.¹
4. "Burden of proof" means the burden to persuade the trier of facts by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.²
5. Because Mr. Burnett has failed to prove that he injured his knee at work, the request for benefits must be denied.

¹ K.S.A. 1998 Supp. 44-501(a).

² K.S.A. 1998 Supp. 44-508(g).

AWARD

WHEREFORE, the Appeals Board affirms the March 2, 1999 Award denying benefits.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Nathan C. Harbur, Overland Park, KS
Wade A. Dorothy, Lenexa, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director